IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPLICATION NO. 6 OF 2004

The Commissioner of Central
Excise & Customs, Nasik. ... Applicant.

V/s.

M/s.Glaxo Smithkline Pharma
Ltd. and another. ... Respondents.

R.V.Desai, senior counsel with Kiran
Kondpile for the applicant.

Mr.Baxi with Kaizad Irani i/b. Haresh Joshi
and Co. for the respondents.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 22nd September 2005.

P.C. :

. Heard.

2. By this application, the applicant-Revenue seeks to refer following substantial questions of law:

1. Whether drawal of sample of finished goods for the purpose of quality control/FDA norms quality, amount to deemed clearance as per explanation to Rules 9 and 49 of the Central Excise Rules, 1944 and, hence, the duty becomes payable on each such removal?

2. When the identical issue was already decided by the Delhi Bench of the Tribunal in the case of Mapra Laboratories P.Ltd. v. C.C.E., Bhopal, 2001 (127) ELT 695 and M/s.Aristo Pharma Ltd. v. C.C.E., 2000 (121) ELT 386, whether the tribunal at Mumbai is bound by the decision of the co-ordinatal Bench at Delhi on the identical issue?

3. The similar questions have been considered by the Larger Bench of the Tribunal, New Delhi in its recent decision in the case of **Commissioner of Central Excise, Chandigarh v. Dabur India Ltd.**, 2005 (182) ELT 185 (Tri-LB); wherein it is held thus:

> "The Basic Excise Manual issued by the C.B.E. & C., and Supplementary Instructions to the Excise Manual from 1-9-2001, clarify the position. Manufacture can preserve the samples of their product for some period for investigation of complaints, if any. No duty should be charged on these samples but an account of such samples should be maintained in prescribed form. If at any time the manufacture desires to clear such samples then these should be assessed to duty as applicable.

4. In view of the above decision, no substantial question of law is involved.

Application is rejected with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA, J.)**